

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
KJLA, LLC	)	
	)	CSR-8149-A
For Modification of the Television Market for	)	
Station KJLA-DT, Ventura, California	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 31, 2011**

**Released: August 31, 2011**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. KJLA, LLC, licensee of broadcast television station KJLA-DT, Channel 49, Ventura, California (the “Station” or “KJLA”), filed the above-captioned petition for special relief seeking to modify the station’s market to include communities and unincorporated areas served by CoxCom, Inc. (“Cox”) and located within Los Angeles and Orange Counties in the Los Angeles Designated Market Area (“DMA”).<sup>1</sup> No opposition to the petition has been filed. For the reasons discussed below, we grant KJLA’s petition.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their markets.<sup>2</sup> A station’s market is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each

<sup>1</sup> Petition for Special Relief filed Mar. 26, 2009 by KJLA, LLC at 1 (hereinafter “Petition”). KJLA requests the inclusion of the following communities from (1) Los Angeles County (the “Los Angeles communities”): Los Angeles (San Pedro), L.A. County (unincorporated), Fort MacArthur AFB, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, Rolling Hills; and the following communities from (2) Orange County (the “Orange County communities”): Aliso Viejo, Camp Pendleton, Coto De Caza, Dana Point, Marine Air Station (El Toro), Emerald Bay, Foothill Ranch, Irvine, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Modjeska Canyon, Newport Beach, Newport Coast, Orange, Portola Hills, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Silverado Canyon, Trabuco Canyon, Tustin/Tustin Heights, and Marine Air Station (Tustin). Petition at 1 n.1.

<sup>2</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) (“*Must Carry Order*”).

<sup>3</sup> Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C.

(continued....)

television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, the total television viewing audience attained by a broadcast station is considered, regardless of the delivery technology used to receive its signal – whether the signal is received over-the-air, or via cable, wireless cable, DBS, SMATV or OVS systems.<sup>4</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.<sup>5</sup>

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as -

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>6</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the

---

(...continued from previous page)

§534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by The Nielsen Company's DMAs. 47 C.F.R. § 76.55(e); see *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>4</sup> For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>5</sup> 47 U.S.C. § 534(h)(1)(C).

<sup>6</sup> *Id.*

[DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

\* \* \* \*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>7</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>8</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
- (2) Grade B contour maps<sup>9</sup> delineating the station's technical service area<sup>10</sup> and showing the location of the cable system headends and communities

<sup>7</sup> H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>8</sup> *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>9</sup> Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>10</sup> While the Grade B contour defined an analog television station's service area, *see* 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for UHF stations is 41 dBu. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, ¶ 3, 19554, ¶ 111 (2005); *Implementation* (continued....)

in relation to the service areas.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>11</sup>

5. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

6. In *Carriage of Digital Television Broadcast Signals First Report and Order* (“*DTV Must Carry Report and Order*”), the Commission concluded that under Section 614(a) of the Act, a digital-only television station has mandatory carriage rights, and amended its rules to reflect this.<sup>12</sup> The Commission also clarified its framework for analyzing market modifications for digital television stations.<sup>13</sup> It affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen market designations, publications, and assignments it used for analog signal carriage issues.<sup>14</sup> In doing so, the Commission presumed that the market of a station’s digital signal would be coterminous with the station’s market area for its analog signal.<sup>15</sup> The Commission also found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television modification petitions.<sup>16</sup> The

(...continued from previous page)

*of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd 17278, 17292, ¶ 31 (2005). See also *Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974, ¶ 7 n.27 (MB, rel. May 20, 2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station’s Grade B contour.”).

<sup>11</sup> 47 C.F. R. § 76.59(b).

<sup>12</sup> See 16 FCC Rcd 2598, 2606, 2610 (2001); 47 C.F.R. §76.64(f)(4).

<sup>13</sup> See *id.* at 2635-36.

<sup>14</sup> See *id.* at 2636.

<sup>15</sup> See *id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station’s digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. See *id.* at 2636 n.254, citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 (1997).

<sup>16</sup> See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636.

Commission recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal. Therefore, in deciding DTV market modification cases, the Commission stated that it would take into consideration changes in signal strength and technical coverage because of new digital television channel assignments and power limits. It concluded that all other matters concerning the modification process for digital television signals will be decided on a case-by-case basis.<sup>17</sup>

### III. DISCUSSION

#### A. Analysis of the Four Statutory Factors

7. The issue before us is whether to grant KJLA's request to include certain Los Angeles and Orange County communities within the Station's television market (hereinafter the "Cox Communities").<sup>18</sup> KJLA is licensed to Ventura, California in the Los Angeles, California DMA – the market where all the Cox Communities at issue are also located.<sup>19</sup> Based on our analysis of the four statutory factors we grant KJLA's petition.

8. The first statutory factor we consider is "whether the station, or other stations located in the same area have been historically carried on the cable system or systems within such community."<sup>20</sup> KJLA admits it has no history of carriage in the Cox Communities.<sup>21</sup> However, on August 27, 2008, KJLA shut down its prior channel 57 analog transmissions from South Mountain, Ventura, and commenced digital-only operations on channel 49 from Mount Wilson in Los Angeles.<sup>22</sup> KJLA has not obtained carriage in the Cox Communities since its move. Nevertheless, KJLA asserts that Cox carries every other full-service television station transmitting from the Mount Wilson antenna farm where the Station's own transmitter is now co-located, placing it at a competitive disadvantage with respect to these stations.<sup>23</sup> Furthermore, MVPDs other than Cox carry KJLA in communities that overlap with, or are adjacent to, the Cox Communities.<sup>24</sup> For example, KJLA asserts that as of January 28, 2009, Time

---

<sup>17</sup> *Id.*

<sup>18</sup> *See supra* n.1.

<sup>19</sup> Although both KJLA and the Cox Communities are now in the Los Angeles DMA, when KJLA (then KSTV) first filed a market modification petition in 1997 it was assigned to the Santa Barbara Area of Dominant Influence ("ADI"). *See Costa de Oro Television, Inc.*, 13 FCC Rcd 4360, ¶ 7 (1998) ("1998 Order"). At that time, the station was not local to the Los Angeles and Orange County communities served by Cox. *See KJLA, LLC v. CoxCom, Inc.*, 24 FCC Rcd 1410, 1413-14, ¶¶ 13, 14 (MB 2009) ("2009 Carriage Order"). Commencing January 1, 2000, the Commission switched to using the DMA surveys prepared by The Nielsen Company. Although this resulted in Ventura County being re-designated as part of the Los Angeles DMA, this did not automatically grant KJLA carriage rights in the Cox Communities. *See id.* at 1411-12, ¶ 7 & n.15, citing *Costa de Oro Television, Inc. (II)*, 15 FCC Rcd 12637, 12644 ¶ 15 (2000). We advised KJLA that to be carried on Cox's systems, it needed to modify its market to add these communities. *See id.* at 1415, ¶ 17. KJLA subsequently filed the instant petition.

<sup>20</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>21</sup> *See* Petition at 8.

<sup>22</sup> *See 2009 Carriage Order*, at ¶ 9, citing Ex. A, Declaration of Kenneth W. Brown at ¶¶ 2, 9A.

<sup>23</sup> *See* Petition at 8-9.

<sup>24</sup> *See id.* at 9-10. In Orange County, KJLA asserts it has been carried in Tustin, La Palma, Cypress, Costa Mesa, Laguna Woods Village, the University of Irvine, Placentia, Yorba Linda, and parts of Newport Beach and Santa Ana. KJLA's history of carriage in these communities either spans several years, or in some cases, since January (continued....)

Warner was carrying it on all of its cable systems serving Los Angeles and Orange Counties.<sup>25</sup> Verizon, Charter Communications, DIRECTV and Dish Network also carry KJLA throughout the Los Angeles DMA.<sup>26</sup>

9. KJLA also argues that Cox's carriage of other stations co-located with KJLA, taken together with the Station's carriage on cable systems overlapping with, or adjacent to, the Cox Communities, support weighing the historical carriage factor in its favor. Furthermore, because KJLA only recently began operating as a full-power, digital-only station on Mount Wilson, it claims it has not had the opportunity to build a history of carriage.<sup>27</sup> Finally, KJLA argues that it serves a niche market because its Spanish-language programming qualifies it as a 'specialty station' and prior precedent confirms that historic carriage is less probative for specialty stations.<sup>28</sup>

10. The second statutory factor is "whether the television station provides coverage or other local service to such community."<sup>29</sup> To analyze a station's coverage or local service, we look to a station's signal contour coverage over the communities, its proximity to the communities in terms of mileage, and its provision of programming with a distinct nexus to the communities. In the digital context, the Commission has stated that a 41 dBu signal contour is the functional equivalent of an analog Grade B contour for UHF channels.<sup>30</sup> KJLA broadcasts on channel 49 and has shown that it covers the Cox Communities with a digital 41 dBu signal contour.<sup>31</sup>

11. KJLA also provides evidence that the distances from its community of license in Ventura to the Los Angeles communities range from 64-69 miles, and 96-108 miles to the Orange County communities.<sup>32</sup> Alternatively, KJLA also shows that its transmitter on Mount Wilson is 36 to 76 miles

(...continued from previous page)

28, 2009. With respect to Los Angeles County, KJLA has been carried in Torrance, San Pedro, Lomita, Harbor City and Wilmington. See *id.* at 9-10 & nn. 25-31, citing Ex. 2, Declaration of Francis Wilkinson, Vice President and General Manager of KLA, at ¶¶ 2-3 ("Wilkinson Decl.").

<sup>25</sup> See Petition at 10, citing Ex. 2, Wilkinson Decl. at ¶ 3.

<sup>26</sup> See *id.* at 11; see also Wilkinson Decl. at ¶ 4.

<sup>27</sup> See Petition at 12 & n.34, citing 2009 Carriage Order at ¶ 9.

<sup>28</sup> KJLA asserts that in such cases the Commission does not treat historical carriage as outcome determinative. See Petition at 11-12 & n.33, citing e.g., *Time Warner Entertainment-Advance/Newhouse Partnership d/b/a, Time Warner Cable*, 22 FCC Rcd 13642, 13649, ¶ 14 (MB 2007) ("*Time Warner*"); *Christian Faith Broadcasting, Inc. v. Cox Communications*, 22 FCC Rcd 16919, 16928, ¶ 21 (MB 2007); *Comcast Cablevision of Danbury, Inc.*, 18 FCC Rcd 274, 278, ¶ 8 (2003).

<sup>29</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(II).

<sup>30</sup> See *supra* n.10.

<sup>31</sup> See Petition at 13, Ex. 4.

<sup>32</sup> See *id.* at 16. The actual distances (in miles) from KJLA's community of license in Ventura to the Los Angeles communities are approximately: Los Angeles (San Pedro) (69), L.A. County (unincorporated) (62), Fort MacArthur AFB (66), Palos Verdes Estates (62), Rancho Palos Verdes (64), Rolling Hills Estates (64), Rolling Hills (65); whereas the distances to the Orange County communities are: Aliso Viejo (102), Camp Pendleton (132), Coto De Caza (108), Dana Point (108), Marine Air Station (El Toro) (95), Emerald Bay (99), Foothill Ranch (98), Irvine (96), Laguna Beach (102), Laguna Hills (102), Laguna Niguel (105), Lake Forest (102), Mission Viejo (105), Modjeska Canyon (103), Newport Beach (92), Newport Coast (93), Orange (90), Portola Hills (104), Rancho Santa Margarita (107), San Clemente (112), San Juan Capistrano (108), Silverado Canyon (102), Trabuco Canyon (107),  
(continued....)



from the Orange County communities, while its transmitter is 35 to 37 miles from the Los Angeles communities.<sup>33</sup> KJLA argues that these distances are in keeping with prior Commission precedent.<sup>34</sup> Furthermore, KJLA notes that its studio is now located in Los Angeles.<sup>35</sup>

12. KJLA also argues that it provides programming directly relevant to the needs and interests of viewers in the Cox Communities, and in particular to the Latino youth demographic and the Hispanic population.<sup>36</sup> KJLA asserts that it produces LATV programming in its Los Angeles studios and airs 36 hours of this programming weekly.<sup>37</sup> In addition, KJLA serves the Hispanic community with weekly public service-oriented programming, with shows focusing on news, lifestyles, community leaders, and documentary specials that highlight major organizations in the Los Angeles DMA.<sup>38</sup> KJLA points out it has historically aired the only prime-time, live, bilingual call-in show serving Hispanic viewers in the Los Angeles Market – “Santana en Vivo.”<sup>39</sup> It also airs an award winning weekly program entitled “Hispanic Lifestyle” that focuses on Latin community leaders and activities of interest to the Latino community.<sup>40</sup> KJLA has also aired locally produced documentary series and specials such as the three-part “History of Orange County” and the “Diocese of Orange.”<sup>41</sup> Altogether, KJLA argues the amount and quality of the programming it offers to the Cox Communities surpasses that approved by the Commission in prior market modification cases.<sup>42</sup>

---

(...continued from previous page)

Tustin/Tustin Heights (93), and Marine Air Station (Tustin) (89). Distances were calculated using the indo.com distance calculator, <http://www.indo.com/distance/index.html> (last visited Aug. 20, 2010) and the Commission’s own calculator for “Distance and Azimuths Between 2 Sets of Coordinates,” <http://www.fcc.gov/mb/audio/bickel/distance.html> (last visited Aug. 20, 2010).

<sup>33</sup> See *id.* at 15 & nn.43-44, citing Ex. 3 at 2-3 (distances in air miles from transmitter to communities).

<sup>34</sup> See *id.* at 15 & n.45, citing *WRNN License Company, LLC*, 20 FCC Rcd 7904, 7909 ¶ 10 (MB 2005) (“*WRNN I*”).

<sup>35</sup> See *id.* at 23.

<sup>36</sup> See *id.* at 18.

<sup>37</sup> See *id.* LATV is the nation’s first bilingual entertainment/music network targeting the 18-34 year-old Latino community and offering a range of content including multi-genre music, lifestyle and entertainment, distributed via digital multicast. See Petition at Ex. 7 at 1. KJLA asserts it airs LATV programming from 4:00 p.m. – 10:00 p.m. Monday-Friday, and from 4:00 p.m.-7:00 p.m. on Saturday and Sunday. See *id.* at 18, citing Ex. 5. The remainder of KJLA’s programming hours consists of programming from “Jewelry Television.” See *id.* KJLA’s LATV programming included 35 on-location field segments in 2008, covering shows, interviews and “shout out” segments involving Latin artists and celebrities; the majority of the segments were filmed in Orange County communities such as Irvine, Newport Beach and Costa Mesa. See *id.* at 18-19, citing Ex. 6.

<sup>38</sup> See *id.* at 19. KJLA’s programming includes “Orange County News,” a 30-minute show airing at 10:00 p.m. on Saturday and featuring news, traffic, sports, people, business, and weather, as well as public affairs segments such as musical performances, festivals, competitions/races, and fundraising events directed to viewers in the Cox Communities or other Orange County communities in close proximity. See *id.* at 19-20 & nn. 63-72, citing Ex.8, “Orange County News Summaries.”

<sup>39</sup> See *id.* at 20-21 & n.74, citing Ex. 9, Santana En Vivo Public File Summaries.

<sup>40</sup> See *id.* at 20.

<sup>41</sup> See *id.* at 20 & n.73, citing Ex. 2, Wilkinson Decl. at ¶ 5.

<sup>42</sup> See *id.* at 21, citing *Time Warner*, 22 FCC Rcd at 13647, ¶10; *WRNN License Company, LLC*, 21 F.C.C.R. 5952, 5959-60 ¶ 16 (MB 2006) (“*WRNN II*”).

13. Because the Commission looks to shopping and labor patterns to help assess the connection between a station and the community at issue, KJLA points to economic and demographic data to demonstrate that the communities it serves are united by common economic, social and cultural forces. It points to profiles developed by the Los Angeles County Economic Development Corporation which demonstrate a significant overlap between Los Angeles, Orange and Ventura Counties with respect to major industries, transportation, and demographics.<sup>43</sup> Furthermore, KJLA states that the size of the Hispanic demographic across the Los Angeles DMA is a clear indicator of KJLA's market-wide appeal.<sup>44</sup> KJLA argues that the commuting patterns between Ventura and Los Angeles<sup>45</sup> as well as the advertising purchased on KJLA by Los Angeles and Orange County entities demonstrate the economic and social ties between regions.<sup>46</sup> Finally, KJLA emphasizes its strong connection to Los Angeles because both its transmitter and studios are located in Los Angeles County, and its primary programming source, LATV, is a regular contributor to community affairs in Los Angeles.<sup>47</sup>

14. The third statutory factor is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."<sup>48</sup> This factor applies if other stations assigned to the market do not serve these communities. In this case, KJLA does not contend that there are no other stations in the market that serve these communities. Thus, this factor is not relevant to our consideration.

15. The fourth statutory factor concerns "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."<sup>49</sup> KJLA asserts

<sup>43</sup> See *id.* at 22 & n.78, citing Ex. 10.

<sup>44</sup> KJLA attaches State of California, Department of Finance reports showing that 4,442,213 Hispanic persons reside in Los Angeles County (44.6 percent of the total county population), 875,579 Hispanic persons reside in Orange County (30.8 percent of the total county population), and 251,734 Hispanic persons reside in Ventura County (33.4 percent of the total county population). See Petition at 22-23 & n.78, citing Ex. 10.

<sup>45</sup> See Petition at 23 & n.79, citing Ex. 14, 2007 Commuter Profile, Ventura County Transportation Commission (showing that while 77% of Ventura County residents live and work in Ventura County, 17% commute to Los Angeles County). In addition, KJLA notes that Ventura restaurants, clubs and events are listed in the Los Angeles Times' online entertainment guide. See *id.* at 23 n.80, citing Ex. 15.

<sup>46</sup> KJLA points to a Mediaweek market profile that shows the Los Angeles DMA has a Hispanic audience of 39% as compared to 13% nationwide. See Petition at 24 & n.85, citing Ex. 11. It argues businesses in the Los Angeles and Orange Counties therefore have a strong incentive to advertise on a station like KJLA catering to Hispanic audiences. This is evidenced by advertisers who have purchased time on KJLA, several from the Cox Communities of Tustin, Orange, Irvine, Santa Ana, Huntington Beach and Costa Mesa. See *id.* at 24 & nn. 86-87, citing Exs. 12 (list of "LA" and "OC" advertisers) & 13 (list of "LA"/"OC" auto dealerships).

<sup>47</sup> See Petition at 23. KJLA notes that in 2008, LATV sponsored a political forum and a media awards program in Los Angeles. See *id.* at nn.81-82, citing Ex. 16 (LATV Press Release for Voto Latino Roundtable) and Ex. 17 (LATV Press Release for airing the Imagen Awards – an award show "established in 1985 to encourage and recognize the positive portrayal of Latinos in all media and to increase Latino representation at all levels of the entertainment industry."). These programs were in addition to KJLA's on location segments produced throughout Los Angeles and Orange County (see *supra* n.35) as well as its coverage of events such as Festival Duranguense – a concert bringing LATV viewers "their favorite stars in person" and "the best musicians of Durango." See *id.* at 23 n.83, citing Ex. 7.

<sup>48</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(III).

<sup>49</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(IV).



that Nielsen's January 2009 report shows that it garners limited ratings in the Los Angeles DMA (0.1 percent) and Los Angeles County (0.1 to 0.2 percent) and no ratings in Orange or Ventura Counties; however, the Station's weekly cume is 312,000 households – which it asserts is greater than the cume of at least one station carried by Cox, KSCI.<sup>50</sup> Our independent analysis of the 2009 Nielsen ratings data indicates that KJLA achieves no values for a total weekly share or total cume. Nevertheless, KJLA argues it is a “specialty station” providing Spanish language programming to a market niche, and that the Commission has routinely discounted viewership when analyzing such stations.<sup>51</sup> Furthermore, given the recent start of its digital-only operation transmitting from Mount Wilson, KJLA argues it has not yet had the opportunity or time to build viewership.<sup>52</sup>

16. We will grant KJLA's petition and modify its market to include the Cox Communities. Since the Commission issued its *1998 Market Modification Order*, KJLA's circumstances have radically changed. KJLA has relocated its transmitter site from South Mountain, Ventura County to Mount Wilson, Los Angeles. It opened studios in Los Angeles and commenced digital-only operations. Moreover, KJLA's transition to digital broadcasting has expanded its coverage, allowing it to cover the Cox Communities with a 41 dBu signal – the functional equivalent of a Grade B signal contour. As the Commission has previously held, Grade B coverage “is an efficient tool to adjust market boundaries because it is a sound indicator of the economic reach of a particular television station's signal.”<sup>53</sup> KJLA also airs 36 hours of LATV programming per week, including shows and segments aimed at the interests of the Spanish-speaking and bi-lingual young Latino/Hispanic population of the Los Angeles DMA. While KJLA's programming does not specifically target each Cox Community on a daily basis, it does endeavor to cover local issues and events in the Communities, and local businesses advertise on the station. We also find it relevant that the Latino/Hispanic population constitutes a substantial portion of the Los Angeles market. Finally, while we cannot wholly disregard that KJLA lacks a history of carriage and garners only minimal viewership, its failure to meet these criteria are offset by its status as a ‘specialty station’ that recently commenced transmission from an antenna site more proximate to the Cox Communities,<sup>54</sup> by Cox's carriage of every other station co-located with KJLA at the Mount Wilson antenna farm,<sup>55</sup> and by KJLA's carriage on other cable systems in communities adjacent to or overlapping

<sup>50</sup> See Petition at 26 & n.91, citing Ex. 19, Nielsen's January 2009 Report.

<sup>51</sup> See *id.* at 26 & n.92, citing *Time Warner*, 22 FCC Rcd at 13649-50, ¶ 14; *Christian Faith Broad., Inc.*, 22 FCC Rcd at 16929, ¶ 24; *Comcast*, 18 FCC Rcd at 279-80, ¶ 14.

<sup>52</sup> See *id.* at 27.

<sup>53</sup> *WRNN II*, 21 FCC Rcd at 5959, ¶ 14 & n.49 (2006), citing *Market Modification and the N.Y. Area of Dominant Influence*, 12 FCC Rcd 12262, 12271, ¶ 17 (1997).

<sup>54</sup> See *Paragon Cable*, 10 FCC Rcd 9462, 9466, ¶ 14 (CSB 1995) (“We recognize that home shopping stations, like religious or foreign language stations (“specialty stations”), are capable of ‘offer[ing] desirable diversity of programming ...,’ yet typically attract limited audiences. We continue to believe, as the Commission did in its specialty station rules, that the fact that such stations attract a smaller audience share must be taken into account in determining the equities concerning a station's right to cable carriage.”), citing *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Adding a New Definition for ‘Specialty Stations’ and ‘Specialty Format Programming,’* CC Docket No. 76-189, First Report and Order, 58 FCC 2d 442, 452 (1998), *recon. denied*, 60 FCC 2d 661 (1976). Furthermore, without accommodating ‘specialty stations’ in our analysis of historic carriage, “weaker or newer stations that cable systems had previously declined to carry, [would be prevented] from ever being carried.” *Time Warner*, 22 FCC Rcd at 13649, ¶ 14 & n.63, citing *Paragon*, 10 FCC Rcd at 9466, ¶ 12.

<sup>55</sup> The Commission has previously found that “[c]arriage by a cable system of a co-located station is frequently a reflection that these stations are part of the cable system's market.” See *Ackerley Media Group, Inc.*, 18 FCC Rcd 16199, 16203, ¶ 9 (2003 MB). While KJLA is not “co-located” with other Mount Wilson stations in the sense of  
(continued....)

those at issue.<sup>56</sup> These factors, taken together with KJLA's robust signal coverage and the recent investment it has made to better serve a significant demographic in the Los Angeles DMA, demonstrate that granting KJLA's petition would be in the public interest.

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the above captioned petition filed by KJLA, LLC, seeking to modify the must-carry television market of digital-only broadcast television station KJLA-DT, Channel 49, Ventura, California, to include communities and unincorporated areas served by CoxCom, Inc. and located within the Los Angeles Designated Market Area<sup>57</sup> **IS GRANTED**.

18. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division  
Media Bureau

---

(...continued from previous page)

sharing a community of license with them, we deem it worthy of consideration that Cox carries every station transmitting from this site, except KJLA. *See Time Warner*, 22 FCC Rcd at 13650, ¶ 15.

<sup>56</sup> *See Paxson Atlanta License, Inc.*, 13 FCC Rcd 20087, ¶ 35 (CSB 1998) ("While carriage on nearby cable systems is not a factor specified in the statute, such carriage serves to demonstrate the belief of both the stations and systems involved that there is a market nexus between the broadcast station and the communities where the station is carried and thus provides evidence as to the scope of a station's market.").

<sup>57</sup> *See supra* n.1. These include the following Los Angeles communities: Los Angeles (San Pedro), L.A. County (unincorporated), Fort MacArthur AFB, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills Estates, Rolling Hills; and, the following Orange County communities: Aliso Viejo, Camp Pendleton, Coto De Caza, Dana Point, Marine Air Station (El Toro), Emerald Bay, Foothill Ranch, Irvine, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Modjeska Canyon, Newport Beach, Newport Coast, Orange, Portola Hills, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Silverado Canyon, Trabuco Canyon, Tustin/Tustin Heights, and Marine Air Station (Tustin).